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Paper No. 11

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SEP 02 2004

In re Application of
Balraj Singh, et al.
Application No. 09/320,833
Filed: May 26, 1999
For: **PREFETCH STREAMING BUFFER**

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600
DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is in response to the Petition for Withdrawal of Abandonment, filed April 9, 2003 pursuant to MPEP §711.03(c)(II) and 37 C.F.R. § 1.181(a), resubmitted via facsimile transmission on June 29, 2004, and further supplemented on August 17, 2004. No fee is required.

On May 24, 2001, the Office mailed a non-final action in the subject application. Applicants' response was timely submitted, with three month extension of time and certificate of mailing, on November 26, 2001. On February 25, 2002 a non-responsive notice was mailed to Applicant due to the fact that the response by Applicant was unsigned. The application was held abandoned for failure to timely submit a response to the Notice of Non-Responsive communication mailed February 25, 2002 (paper No. 6). A Notice of Abandonment was mailed October 18, 2002 (paper No. 8).

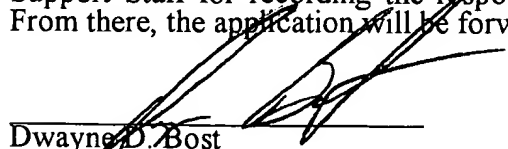
Petitioner alleges that the Notice of Non-Responsive communication was not received. In support thereof, the Petitioner attests, within their supplement to the original petition, to a personal search of the file jacket and docket records. Petitioner's original petition stated that the non-responsive notice was not received and further referenced the accompanied docket records, indicating where the correspondence would have been recorded had it been received.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating: (1) that the Office communication was not received by the Practitioner and (2) attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner has satisfied the requirements set forth above. The petition is **GRANTED**.

The Notice of Abandonment is vacated and the holding of abandonment is withdrawn.

Petitioner included a signed copy of the original response to the Office action mailed May 24, 2001 with their petition. Therefore, the application will be forwarded to the TC2600's Technical Support Staff for recording the response and preparing a refund of the petition fee received. From there, the application will be forwarded to the examiner for action in appropriate turn.


Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications